THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.1040 OF 2002

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Date:07-03-2006

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Between:

M/s KREBS Bio-Chemicals Limited ….Petitioner

And

Deputy Commissioner, Commercial Taxes

And others …Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.1040 OF 2002

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O R D E R (Per the Hon'ble Sri Bilal Nazki, J):

Heard learned counsel for the parties and with their consent, the writ petition is being disposed of at this stage.

Counter has been filed. The order dated 27-11-2001 passed by the Deputy Commissioner (CT), Nellore is challenged in this writ petition. It appears that by way of an Ordinance, which later became an Act being Andhra Pradesh Sales Tax (Settlement of Disputes) Act, 2001 (for short "the Act"), a scheme was envisaged for settling the claims with respect to those assessees who were in arrears. All the persons, who had pending litigation with various appellate and revisional authorities, prior to 31st March, 2001, could avail this scheme. The petitioner also moved an application for settlement of a dispute regarding penalty of an amount of Rs.8,25,957/- for the year 1993-94 under the Central Sales Tax Act. A show cause notice was given on 23-10-2001 by the Deputy Commissioner (CT) FAC, Nellore, after the application for settlement was made, in which the reasons for not settling the dispute in terms of the Ordinance were given. One of the reasons given was that

> *"The State Representative before the S.T.A.T, A.P.,, Hyderabad, in his Ref.No.B/133/99, dated 16-10-2001 has informed that the judgment of this case was pronounced in the open court as dismissed on 09-10-2001"*

The authorities thought that since the matter had been disposed of finally by the Tribunal on 09-10-2001, therefore, the petitioner was not eligible for a settlement in terms of the Act. This thinking is reflected also in the impugned order dated 27-11-2001. The Deputy Commissioner stated that

> *"The S.R. before the S.T.A.T, Andhra Pradesh, Hyderabad, in his Rc.No.B/133/99, dated 16-10-2001, has informed that the judgment of this case was pronounced in the open Court as dismissed on 09-10-2001"*

Under the Act it was not the material whether the matter had been disposed of or not. The requirement was whether as on 31st March, 2001 any dispute between the assessee and the Department was pending either before the appellate or revisional authority. Since the matter was decided on 16-10-2001, according to the impugned order, and it is not disputed that this matter was pending as on 31st March, 2001, therefore, we hold that the petitioner was eligible for having a settlement in terms of the Act. Therefore, the writ petition is allowed. The impugned order passed by the Deputy Commissioner is set aside and the matter is remanded to him for considering the application of the petitioner for settlement in terms of the Act. No order as to costs.

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(Bilal Nazki, J)

7th March, 2006

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(G.Chandraiah, J)

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